

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA ) CAUSE NO. 3:19-CR-83-M (1)  
(  
vs. )  
( JULY 17, 2020  
) DALLAS, TEXAS  
RUEL M. HAMILTON ( 1:00 P.M.

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MOTION TO REVOKE OR MODIFY  
DEFENDANT'S CONDITIONS OF PRETRIAL RELEASE

BEFORE THE HONORABLE RENEE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE

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A P P E A R A N C E S

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1 THE COURT: The Court calls Case No. 3:19-CR-83-M,  
2 United States of America versus Ruel--forgive me if I  
3 mispronounce that--M. Hamilton.

4 MR. WIRMANI: Andrew Wirmani, Chad Meacham, and  
5 Tiffany Eggers for the Government, Your Honor.

6 MR. MELSHEIMER: Your Honor, good afternoon. May it  
7 please the Court. Tom Melsheimer here on behalf of  
8 Mr. Hamilton. I understand my colleague Mr. Lowell is going  
9 to be present by video telephone link.

10 THE COURT: Okay. Let me see what's going on with  
11 that. We'll wait until they connect with them. You can have  
12 a seat.

13 MR. MELSHEIMER: Thank you, Your Honor.

14 THE COURT: Ms. Eggers, is your Cisco microphone on?  
15 Is it green.

16 MS. EGGERS: It is.

17 THE COURT: And let the record reflect that  
18 Mr. Lowell has joined us BY video teleconferencing.

19 Mr. Lowell, can you see and hear what's going on in the  
20 courtroom and the participants?

21 MR. LOWELL: Your Honor, I can see you and the  
22 courtroom. You're not coming in very loud. I'll try to  
23 adjust my volume, but it's not loud for you. Can you hear me?

24 THE COURT: Yes, I can hear you very well.

25 Mr. Robbins, will you also be participating in the

1 hearing?

2 MR. ROBBINS: No, Your Honor.

3 THE COURT: Okay. Is the Government ready to  
4 proceed?

5 MR. WIRMANI: We are, Your Honor.

6 THE COURT: And are you ready to proceed,  
7 Mr. Melsheimer, on behalf of Mr. Hamilton?

8 MR. Melsheimer: May it please the Court, we are,  
9 Your Honor, along with Mr. Lowell.

10 THE COURT: Okay. And we are here, of course, on  
11 the Government's sealed motion to revoke or modify the  
12 Defendant's conditions of pretrial release that was filed on  
13 July 9th of this year, and a response was filed by Mr. Lowell  
14 and Mr. Robbins on the 10th. There was an email message and  
15 there was a response to that email message filed, and I have  
16 reviewed all of them.

17 You may call your first witness, Mr. Wirmani?

18 MR. WIRMANI: Your Honor, given the fact that the  
19 parties have extensively briefed this issue and the Court has  
20 the actual recordings before it, we don't intend to put on any  
21 live testimony. What I have for the Court is a proffer of  
22 some information that I'd kind of like to give in the context  
23 of argument.

24 So may I proceed, Your Honor?

25 THE COURT: You may.

1           MR. WIRMANI: I think what the Court has before it,  
2 Your Honor, is a clear, knowing, willful, and egregious  
3 violation of this Court's prior order. What is more  
4 concerning about the situation to the Government is the fact  
5 that that violation, given the totality of information before  
6 the Court, was clearly calculated to obstruct the Government's  
7 access to a key witness in this case, Leslie Martin. She's a  
8 former employee of the Defendant.

9           Just starting with the core violation, Your Honor,  
10 obviously the Court's order was unambiguous. The Defendant  
11 was to have no contact, directly or indirectly, or with  
12 anybody that he thought might be a witness in this case. And  
13 despite what the -- the they tried to take, Your Honor, it's  
14 clear that the Defendant knew when he had this contact with  
15 Ms. Martin in January of 2020 that she was a potential witness  
16 in this case. And we know that for a couple of reasons.

17           In this case, Judge Lynn was putting a questionnaire out  
18 to potential jurors. During the process of that, she had the  
19 parties in December of 2019 submit to the Court and to  
20 opposing counsel a list of potential witnesses. We did that I  
21 believe in mid December of 2019. It's Exhibit 1 to our  
22 filing. It's Exhibit 1 in the exhibits I put up there for the  
23 Court. And you can clearly see that Ms. Martin was identified  
24 as a witness -- a potential witness in this case.

25           In and around that time, the Government also superseded

1 the indictment with allegations that directly implicated  
2 Ms. Martin. Specifically, one of the allegations in the  
3 superseding indictment dealt with the fact that as part of the  
4 Defendant's bribery scheme, he would give political  
5 contributions to individuals at the direction of Carolyn  
6 Davis, a former city council member. To sidestep the fact  
7 that there is a thousand dollar limit per donor in the City of  
8 Dallas, he would write multiple checks and then he'd attribute  
9 them in the memo line to various people--children, relatives  
10 and, particularly relevant here, employees such as Ms. Martin.  
11 And he did this without Ms. Martin's knowledge and the  
12 knowledge of the other AmeriSouth employees.

13 THE COURT: May I interrupt you just a minute,  
14 Mr. Wirmani? The exhibits you're referring to I have in a  
15 book, and I just want to make sure Defense counsel has a book  
16 with those exhibits as well.

17 MR. WIRMANI: They do, Your Honor. I provided one  
18 to Mr. Melsheimer and last night Mr. Lowell received a copy as  
19 well.

20 THE COURT: All right.

21 MR. WIRMANI: Thank you for reminding me, Your  
22 Honor.

23 And if the Court turns to Exhibit 8, on page 2 there,  
24 bottom left-hand corner, the Court can see a check written by  
25 the Defendant Ruel Hamilton for a thousand dollars made out to

1 the campaign of Dwaine Caraway. And you'll see in the memo  
2 line there Leslie Martin in the Defendant's writing,  
3 handwriting, is listed in an attempt to make this check  
4 attributable to her.

5 So given that, it is clear that the Defendant knew Ms.  
6 Martin was a potential defendant in this case when he made  
7 contact with her.

8 And I think most tellingly, Your Honor, this is a  
9 situation where this contact takes place in January of 2020.  
10 As far back as November of 2019, the Defendant was already  
11 hiring counsel on his dime to represent various AmeriSouth  
12 employees, current and former, and there's only about four  
13 employees that are implicated in this scheme to round out  
14 these checks in the names of other people, and that Ms.  
15 Martin's obviously one of them. So we don't think there's any  
16 serious dispute that the Defendant knew that Ms. Martin was a  
17 potential witness in this case.

18 And, of course, the violation itself, the fact that he  
19 made contact with Ms. Martin, is undisputed. The Court has  
20 before it a voicemail and two substantive phone calls, Your  
21 Honor, from the January 2020 time period.

22 So just based on that core evidence, I think it's clear  
23 that the Government has satisfied its burden under §3148 to  
24 show by clear and convincing evidence that the Defendant  
25 violated his conditions.

1           And this really isn't a situation that's amenable to any  
2       remedy other than revocation, Your Honor. It is likely that  
3       the Defendant will continue to violate his conditions because  
4       those conditions were clear and unambiguous from the very  
5       beginning. There is no exception in the Court's conditions  
6       for attempting to inform them that he's going to hire counsel  
7       for them, and there's no exception for attempting to set up a  
8       meeting with Mr. Lowell. The condition is absolute. The  
9       Defendant stood here before this Court, said he understood the  
10      condition, he signed documents to that effect, and he  
11      understood full well that if he violated that condition he  
12      could end up in a situation like this.

13           But I think beyond that, it's really the content of these  
14      phone calls that I think is concerning and I think really  
15      warrants the Court's intervention in addressing this issue,  
16      Your Honor.

17           On these phone calls you will see that the Defendant is  
18      clearly attempting to dissuade Ms. Martin from cooperating  
19      with the Government. Over the course of that 25 minutes, Your  
20      Honor, the Defendant tells Ms. Martin that law enforcement  
21      lies, that they'll make up facts, that they're stormtroopers,  
22      that they're going to intimidate her, and that if she talks to  
23      them she might get indicted for a crime she didn't commit. He  
24      also says that if it was him, he wouldn't talk to law  
25      enforcement, and even his own lawyer Mr. Lowell, if he had the

1 opportunity to talk to Ms. Martin, he also would tell her that  
2 she should not speak to law enforcement.

3 Now, the Court has all of those recordings before it. I  
4 hope the Court, either now or later, has the opportunity to  
5 listen to the totality of the recordings. I think it's  
6 important to listen to it in the context.

7 Out of respect for the Court's time, I'm simply going to  
8 play some of the key aspects from those recordings that we  
9 think are relevant, starting with Government's Exhibit 6, Your  
10 Honor, which is a telephone call that the Defendant and  
11 Ms. Martin had on January 8th of 2020.

12 (Whereupon, excerpts of Government's Exhibit No. 6  
13 were played in open court.)

14 MR. WIRMANI: And then, Your Honor, a subsequent  
15 phone call took place approximately a week later on January  
16 22nd of 2020. I'd just like to play for the Court a few  
17 select portions of that phone call as well.

18 (Whereupon, excerpts of an unidentified Government  
19 Exhibit were played in open court.)

20 MR. WIRMANI: So, Your Honor, based on that, it is  
21 clear as day what the Defendant was intending to accomplish  
22 here.

23 With all due respect to the positions in Defense  
24 counsel's motion--and I'm not faulting them because I think  
25 that, you know, they have a hard task in this case trying to



1 defend the conduct--this goes well beyond a mere scheduling  
2 call. We're not here because our feelings are hurt. We're  
3 big boys, we do stuff that's much worse than this on a daily  
4 basis, and the Defendant's First Amendment rights aren't  
5 really the issue. He doesn't have a First Amendment right to  
6 violate his conditions. He doesn't have a First Amendment  
7 Obstruct justice.

8 So based on the totality of that, Your Honor, I think the  
9 violation before the Court's clear. I think the conduct is  
10 egregious. Now, I understand that these types of decisions in  
11 this environment have become more difficult for the Court, so  
12 ultimately I'm going to defer to the Court's reasoned judgment  
13 on how to address this issue.

14 That's all I have, Your Honor.

15 THE COURT: Thank you.

16 MR. MELSHEIMER: Your Honor, I'm going defer to  
17 Mr. Lowell.

18 THE COURT: Just a second, Mr. Lowell. Are you in  
19 front of the computer?

20 MR. LOWELL: Yes.

21 THE COURT: Okay. Now I can hear you. When you  
22 first started, I couldn't hear you. Can you start again,  
23 please, sir?

24 MR. LOWELL: Yes. I'll wait and not talk when  
25 somebody else is talking.

1 I was first thanking you for letting me participate and  
2 asking if you could hear me okay.

3 Can you hear me?

4 THE COURT: We all can hear you.

5 MR. LOWELL: Okay. Thank you.

6 Let me start with the premise of what Mr. Wirmani said.

7 In order to use this phrase "to put this in context," I  
8 want to take you back to the time period where the Government  
9 is alleging the events -- well, showing the events to have  
10 occurred.

11 The end of December there was a little bit of tumult in  
12 the case. About three weeks before trial, the U.S. Attorney's  
13 Office informed us that they were going to bring a superseding  
14 indictment. That gave the Court some concern because there  
15 had been jury questionnaires sent and among the jury  
16 questionnaires there was a list of witnesses.

17 In the middle of December when all this was going on and  
18 we were trying to figure out if a supplemental jury  
19 questionnaire was needed or what it would say, as the U.S.  
20 Attorney's Office has given you, there is an email from them  
21 to me listing 18 or 19 witnesses in addition to the however  
22 many dozens there were before. And as I said in my  
23 submission, Judge, I can't honestly tell you that I ever--and  
24 this is on me--informed Mr. Hamilton of that event.

25 For the Government to conclude that his contacting Ms.

1 Martin or anybody else was a knowing and willful violation of  
2 a condition really is not the case given the context of what  
3 was going on. And more importantly, the contact is for my  
4 office. I had -- as you heard on the tape, the conversation  
5 she was having -- she's having with Mr. Hamilton, you heard  
6 the reference to 10 years. You heard the reference to taxes.

7 The point of the contact by Mr. Hamilton, if you read the  
8 entire transcript, was that the U.S. Attorney's Office had  
9 told us at the exact same time that they were superseding the  
10 indictment that they were also considering opening an  
11 investigation on payroll tax issues from 10 years before.  
12 Mr. Hamilton informed me that the person who had as much  
13 knowledge as anybody as to that subject was the person  
14 involved, Leslie Martin, who was the person involved in the  
15 payroll tax issues.

16 I tried to reach out to Ms. Martin to find out what I  
17 could because I had no idea what this was about, and then  
18 asked Mr. Hamilton, because she did not know my phone number,  
19 to make contact, to make the introduction. And if you look at  
20 the begins of the transcripts, you can see that's what's going  
21 on.

22 At the same time the idea that Mr. Hamilton was trying to  
23 persuade her to do something other than give her the choice to  
24 talk or not to talk also in the transcript belies what was  
25 also going on at the time. If you look at the unredacted

1 transcript, you will see that right before the call that  
2 occurred with Mr. Hamilton and Ms. Martin, the FBI had, in  
3 fact, visited another one of the AmeriSouth company's  
4 employees, and in so doing, as the transcript shows,  
5 Mr. Hamilton was told by this employee afterwards that people  
6 banged on her door; stayed on the doorstep; wouldn't go away  
7 when she asked them to; identified themselves as the FBI, she  
8 did not believe that they were there them; she was there by  
9 herself; she ended up calling the police based on the conduct  
10 at the door. And when the police came, they showed the IDs,  
11 and her husband came home, and then the event occurred. She  
12 was in tears that night. She was in tears when she recounted  
13 the story. It was with that background as well that he could  
14 understand, or at least the words that Mr. Hamilton speaks are  
15 the words that she speaks.

16 I want to come back to the words in a second, but I want  
17 to make sure that the Court is aware that what you're not  
18 seeing in the transcript--and as to the issue that  
19 Mr. Wirmani said exists, which was any superseding indictment  
20 charged about campaign checks--was him saying anything about  
21 campaign checks, and the only subject that he mentions is the  
22 10-year-old 2010 tax investigation which was then a new issue  
23 and she was the person in charge.

24 By the way, there was nothing in the indictment or the  
25 superseding indictment on that subject. In this case, she

1 would not have been a witness, even if I explained to  
2 Mr. Hamilton what she was on that email, for tax issues; and  
3 that she was uniquely situated to help me understand the  
4 issues that we're now being told that needed to be understood,  
5 that was the nature of the content.

6 In addition to which, I saw that the Government said  
7 things like what they just said to you--that he says back all  
8 the way to November, Mr. Hamilton was telling his employees  
9 that they could have counsel, quote, on his dime was his  
10 phrase. Well, in America everyday employers indemnify their  
11 employees who are in need of or have the ability to consult  
12 with an attorney. And in the nature of what was now being  
13 investigated, which might be payroll tax issues as well as  
14 others that the employees were involved in, it was prudent of  
15 us to at least offer every employee the opportunity to consult  
16 with a lawyer. We did not know the nature of what the  
17 investigation was, and it is my practice to do that.

18 And Mr. Hamilton did tell her, as was clear in the  
19 transcript, that she had the ability to do that or not, and  
20 the ability to talk or not, and that is all over the various  
21 transcripts. But that's part of the context that was going on  
22 as well.

23 In addition to which, as the conversation was happening  
24 in the period of what was just being done, you should know the  
25 other issues, because Mr. Wirmani takes Mr. Hamilton's words

1 and say that they were an attempt by using the phrases the FBI  
2 lies, the FBI intimidates, and the FBI charges people when  
3 they haven't done the crime. Right at the exact time that all  
4 this was happening, this is what I and Mr. Hamilton learned  
5 for the first time right in this period.

6 First, I already told you about the event at the front  
7 door of another employee leading to that event -- result in  
8 which she conveyed. It was exactly at this time and after we  
9 made motions, the Government relented and gave us access to  
10 transcripts which showed that not only had they engaged then  
11 former counsel for Dwaine Caraway as a person to help set up  
12 their conversation in August of 2018 with Mr. Hamilton, we  
13 learned for the first time in that period of time that while  
14 Dwaine Caraway was running for the city council in 2016 and  
15 '17, that FBI agents gave him tens of thousands of dollars of  
16 cash while he was a candidate; something we did not know and  
17 really was quite shocking and extraordinary in terms of  
18 Mr. Hamilton's mindset what the FBI does.

19 MR. WIRMANI: Your Honor, some of this is well  
20 beyond the scope of this hearing, Your Honor.

21 THE COURT: I agree, but I'm going to let him have  
22 his say.

23 Go ahead.

24 MR. LOWELL: I'm sorry, Judge. If you and the  
25 Government think it's beyond, Mr. Wirmani was talking about

1 the things Mr. Hamilton said about intimidation and lying and  
2 I'm telling you he learned right at the time this call was  
3 made. But it's in our papers and I don't want to take I more  
4 of the Court's time, but I think it's very ermine, because  
5 Mr. Wirmani said we have to understand the context.

6 Mr. Wirmani told you about 15 minutes ago about the  
7 checks that -- and he showed you the one for Leslie Martin  
8 about going to Dwaine Caraway's campaign, which was exactly  
9 one of the things that we were learning about what was going  
10 on with Mr. Caraway.

11 But the more important point, the federal government  
12 isn't bringing a case for Mr. Hamilton making excessive local  
13 campaign contributions. The theory of their case is that he  
14 made contributions, some of which were in excess, as part of  
15 his agreement with Carolyn Davis as part of a bribe scheme  
16 because that is the federal charge. Interestingly, the checks  
17 that are going to Dwaine Caraway are not part of that possible  
18 scheme as to who could be a witness.

19 Carolyn Davis in no way, shape, manner, or form, as all  
20 the discovery shows, was not seeking Mr. Hamilton to provide  
21 checks to the Caraway campaign. Indeed, Mr. Caraway had  
22 chosen, because he turned out another person to be the person  
23 to take over his seat thereafter. I'm only raising that  
24 because the Government tempers their motion and their points  
25 to you with these disconnected theories -- I'm sorry --

1 disconnected sentences.

2 I'll give you another. In their motion to you, they then  
3 happen to throw out that at the same period of time  
4 AmeriSouth, the company that both Mr. Hamilton worked with and  
5 Ms. Martin did, it was a check, a distribution check for an  
6 investment that Ms. Martin had made. And in their papers to  
7 the Court, they say, What a coincidence; this must be in the  
8 same motion of a scheme that Mr. Hamilton was trying to  
9 influence. And they even said to you that this was the first  
10 time in 17 years that this had happened.

11 In our response we showed that, again, either Ms. Martin  
12 misled or misreported to the Government or something, because  
13 there were dozens of such to her and others that were required  
14 to be distributions for investments they made in the period.  
15 And I won't take your time, but if you look at our response,  
16 we basically set out the chronology, which has nothing to do  
17 when Ms. Martin was identified even in the period where  
18 Mr. Hamilton made contact at my request.

19 In the meantime, with all of this, this is what is clear.  
20 Mr. Hamilton did contact Ms. Martin. Mr. Hamilton knew that  
21 she was somebody I needed to speak to to learn facts about a  
22 new element of an investigation that was not part of the case.  
23 He did so without understanding, as I think our papers show.  
24 When Mr. Wirmani says it was knowing and willful and it was  
25 clear that she was a witness, it was by no means clear that



1 she was a witness. Now, I understand that in an email she was  
2 a potential witness, but she was a potential witness for  
3 something having nothing to do with what is in issue that you  
4 can hear on the transcript. Nevertheless, he contacted her  
5 and, nevertheless, he did it under my direction to do so  
6 because she would not respond to me.

7 We all could have been more cautious with respect to  
8 this. And given what he says -- what Mr. Wirmani says is so  
9 offensive, I've given you the context to understand why he  
10 felt the way he did at the time.

11 With that in mind, I think the Government's request that  
12 his -- one more thing. Two more things. I'm sorry.

13 This event occurred in January. Prior to that, from the  
14 time he was indicted in February of '19 and from January to  
15 the present, there's been no incident of any remote violation  
16 of any condition, other than this incident, not one, and he  
17 has done everything the Court has imposed on him to do.

18 In addition to which this event happened in January. And  
19 I realize the Government has a view of what it is and what it  
20 was. But it is July before they brought it to anybody's  
21 attention, let alone mine, especially because they invoked my  
22 name in what was being said.

23 And I'm only pointing that out in the case that with this  
24 track record and with this record, for the Government to say  
25 that the only remedy is to revoke his bail and send him to

1 jail where he is in three vulnerable categories, including  
2 age, cancer survivor, immune deficiency, and impaired lungs,  
3 is overkill even if he was the healthiest person in the United  
4 States right now for the event that they are bringing to the  
5 Court's attention, as we said in the response.

6 Now that I put all the dots together, I understand the  
7 Government's concern. I put it partially on me and, of  
8 course, partially on my client. But the remedy here is not  
9 what they ask. The remedy is for us to be better--me and my  
10 client. I now understand that the Government views her in the  
11 capacity not just as a tax witness. I see how she fits into  
12 their other aspects, even though the Dwaine Caraway check  
13 makes no sense to me given what their allegations are about  
14 Ms. Davis, and that is the proper result of this. We are on  
15 our notice, and I just think, for whatever reason, the  
16 pounding that they're doing is a little bit over the top.

17 THE COURT: Mr. Lowell, let me ask you a question.  
18 You said that you told Mr. Hamilton to contact Ms. Martin  
19 because you couldn't reach her. Did you advise him to have a  
20 discussion with her about getting counsel and getting specific  
21 counsel and to also discuss whether or not she should talk to  
22 the FBI if they contacted her?

23 MR. LOWELL: I can't get into the attorney/client  
24 privilege aspect, other than telling it to you this way. It  
25 was on my request that Mr. Hamilton contacted her to ask if

1 she would talk to me. It was at my request to Mr. Hamilton  
2 that she, like four or five other employees, were notified  
3 that the company was indemnifying them if they wanted lawyers,  
4 whether they picked those same lawyer or not, and that had  
5 been conveyed to others as well as her. And I think that  
6 answers your inquiry, Judge.

7 THE COURT: I don't think it answers my inquiry, but  
8 I understand, sir.

9 MR. LOWELL: But, I mean, do you -- I'm trying to  
10 answer without --

11 THE COURT: And I'm not asking you to violate any  
12 privilege that you have a discussion with your client and are  
13 not in a position to have him waive, but I don't think it  
14 answers the question really.

15 Is there anything else, Mr. Lowell?

16 MR. LOWELL: If there are any other questions you  
17 have than that.

18 I don't think I have neglected to explain the context of  
19 what was going on and the words that were spoken that had been  
20 brought to your attention and the nature of why it happened  
21 and, more importantly, to put into the scheme of a case that's  
22 now a year-and-a-half old the only event that took place that  
23 had been brought to your attention, but especially the notion  
24 that when the U.S. Attorney's Office says this is the only  
25 remedy that can occur, I think I've said enough on that,

1 Judge.

2 THE COURT: Okay. Thank you, sir.

3 MR. WIRMANI: Your Honor, may I have the last word,  
4 briefly?

5 THE COURT: You get to have the last word.

6 MR. WIRMANI: Thank you, Your Honor.

7 I have no doubt that Mr. Lowell contacted Mr. Hamilton  
8 and asked him to reach out to Ms. Martin. I'll take his word  
9 for that as an officer of the Court.

10 What I think everybody in this courtroom knows is that  
11 Mr. Lowell did not advise his client to tell Ms. Martin that  
12 he wouldn't speak to the FBI, that the FBI stormtroopers, that  
13 they are going to intimidate her, get her indicted for conduct  
14 she didn't commit. I think we all know that's clear, Your  
15 Honor.

16 The thrust of his argument is that his client did not  
17 technically understand that Ms. Martin was a witness in the  
18 bribery case. We dispute that for the reasons we set forth in  
19 our motion. But Your Honor, even if you credit that argument,  
20 I think it's clear under the relevant statute that there is  
21 probable cause to believe that the Defendant obstructed the  
22 ongoing tax investigation. It's a grand jury investigation,  
23 it fits the statute. Wholly apart from the issue of whether  
24 those charges will be brought, whether they could be proven  
25 beyond a reasonable doubt to a jury, probable cause is a very,

1 very low standard, and on the face of those tapes, that  
2 standard is satisfied here.

3 And finally with respect to the remedy, Your Honor, I'm  
4 happy to discuss alternative remedies, if one exists. The  
5 issue is that I can't think of a modification to that  
6 condition that will prevent this conduct in the future because  
7 the condition at the very beginning was absolute. There was  
8 no exception for the things that the Defendant engaged in, and  
9 especially those that were beyond the advice of his lawyer.

10 So with that, Your Honor, we'd ask that the Court fashion  
11 a remedy that's appropriate for the violation, Your Honor.

12 THE COURT: Mr. Hamilton, you appeared before me on  
13 March 1st, 2019. I entered an order setting conditions of  
14 release in your case, and I'm going to read from that order  
15 which specifically says that "The Defendant must avoid all  
16 contact, directly or indirectly, with any person who is or may  
17 be a victim or witness in the investigation or prosecution,  
18 including any co-defendants or co-conspirators."

19 In addition, above the place that you signed, and you  
20 indicated to me that you did indeed sign, and before you  
21 signed you understood the conditions under which I was  
22 releasing you and agreed to abide by them, it states under the  
23 section "Advice of Penalties and Sanctions" that "It is a  
24 crime punishable by up to 10 years in prison and a \$250,000  
25 fine, or both, to obstruct a criminal investigation, tamper

1 with a witness, victim, or informant, retaliate or attempt to  
2 retaliate against any witness, victim, or informant, or  
3 intimidate or attempt to intimidate a witness, victim, juror,  
4 informant, or officer of the court."

5 And as is relevant here, it also explained to you that  
6 among the possible penalties in this case, it could mean that  
7 you be jailed pending your trial.

8 After you informed me that you knew and understood all of  
9 the conditions under which I was releasing you, I told you  
10 that by law, under the law I was required to inform you and  
11 did inform you of certain issues, including the fact that if  
12 you violate any condition of release, a warrant for your  
13 arrest may be issued and you may be jailed pending trial and  
14 also prosecuted for contempt of court.

15 I also--it was the very last thing I advised you of--I  
16 advised you that it is a crime to try to influence, threaten,  
17 attempt to bribe, or retaliate against any juror, witness, or  
18 other person who may have information about this case, or to  
19 otherwise obstruct the administration of justice.

20 So on several fronts I made clear that, first of all, you  
21 were not to have any contact with any person who even may be a  
22 witness in this case and any person who may be a witness in  
23 the investigation of this case, not simply the prosecution.  
24 Also I made clear that the consequence of violating that order  
25 could include the fact that you be jailed pending your trial

1 in this case.

2 I find, based on the evidence that I've heard here, that  
3 presented in the written briefs, as well as the Government's  
4 exhibits here -- and I will say that, although I've not  
5 listened to the entire calls, everything I did listen to was  
6 already transcribed and included in the Government's brief as  
7 attachments, and I heard no objection from anyone about me  
8 considering the briefs of either party. In fact, both parties  
9 suggested that I consider their briefs and the attachments  
10 thereto.

11 I find based on those attachments that you knowingly --  
12 that the Government's established that you knowingly violated  
13 the order setting conditions of release in this case by  
14 contacting a person who you knew was a potential witness in  
15 the investigation, even if you were not aware that that person  
16 was a potential witness in the prosecution of this case. But  
17 I do think there is ample evidence that you actually knew this  
18 person was a potential witness in the prosecution of this  
19 case. You knew or you should have known, definitely.

20 Also, I have talked with the Pretrial Services officer,  
21 and I have tried to figure out, especially since I'm going to  
22 tell the Government I was disappointed that it took several  
23 months for it to be brought to my attention that the order  
24 setting conditions of release was violated, but I talked with  
25 the Pretrial Services officer about what conditions I could

1 add in this case, because now having made those findings, the  
2 question before me is whether or not there is a combination of  
3 conditions I could impose which would basically take care of  
4 this issue, make sure this doesn't happen, and that whether or  
5 not you would likely follow those conditions.

6 I will tell you, first of all, that I cannot find that  
7 you would likely follow any conditions I could impose, because  
8 you blatantly violated the conditions that I did impose. And  
9 as to the second question or the other question, talking with  
10 the Pretrial Services officer, I am at a loss as to what I  
11 could possibly do in this case or what condition I could  
12 impose, other than what I've already said to you, that would  
13 prevent you from reaching out--regardless of why you did,  
14 because the order said not to do it, period--but reaching out  
15 to any person who may be or is a victim or witness to the  
16 investigation or prosecution of this case that I haven't  
17 already imposed. I cannot think of a single thing.

18 Mr. Lowell, I invite you to address specifically what I  
19 could do that would prevent that from happening in the future.  
20 And I'm going to tell you that I'm not convinced that just the  
21 simple promise that, Now we understand, is going to be good  
22 enough, because I don't think that the order in any way was  
23 ambiguous. I followed the order up with written admonitions  
24 in court. I think it's clear from the conversation and the  
25 content of the conversations that Mr. Hamilton's intent in



1 talking to Ms. Martin was more than just getting her to call  
2 you. And so if you have some conditions that you think I  
3 could impose that would take care of that, you let me know  
4 now.

5 MR. LOWELL: I do, Judge. Thank you for giving me  
6 the chance.

7 There are a few things, given your findings, that I  
8 believe are warranted, other than the Draconian one that the  
9 Government has asked.

10 First and foremost, I think Mr. Hamilton has been  
11 released without having to put up any additional security.

12 But more importantly than that, if you don't think,  
13 Judge--and I know you do, because I know the Court well, this  
14 Court well--that this whole process hasn't scared the bejesus  
15 out of the client, who may not have understood the  
16 potentiality of a witness, this may be the case with others,  
17 but you could well understand that this is quite an event for  
18 somebody like Mr. Hamilton.

19 So I think your concern really that there aren't -- that  
20 he -- that there's no chance that he would obey is really  
21 broad, honestly. But there is that.

22 The third thing is, the condition that we can also  
23 impose, that other than his family and those who are his  
24 friends, other than an expansive list I'll work out with the  
25 Government of not only who is or might be a witness, or

1 anybody else, Mr. Hamilton cannot call anybody other than the  
2 people that we define, so that there is no ambiguity that you  
3 should be worried about that there's a gray area, once we  
4 establish with the Government who that might be.

5 And I think that, you know, my being more vigilant -- and  
6 I have to take some of the blame, Judge, even though you  
7 thought I couldn't answer all of your questions, I answered a  
8 fundamental one. So I would say that if you were not to count  
9 the impact that this whole proceeding has had on my client,  
10 you're not giving that enough; and if you're not also taking  
11 into consideration that if the issue is -- the only thing in a  
12 year-and-a-half that this one incident -- I mean, this  
13 incident with one person occurred, to put in perspective, we  
14 surely can create conditions that will assure you and the  
15 Government that Mr. Hamilton, and in this case I, have learned  
16 our lesson and can be trusted not to do anything that would  
17 give you any concern in the future.

18 And as I said, there could be security, there could be an  
19 expansive list, there could be the prohibition about him  
20 contacting anybody other than the people that we put on the  
21 list--I mean, I don't mean far-flung people calling from  
22 California, but people in the Dallas area--he can report on a  
23 weekly basis as to who it is that he's speaking with so that  
24 that list can be viewed by Pretrial Services. All that can  
25 happen as opposed to the ultimate penalty, especially in the

1     midst of COVID-19, which I really think goes too far, Judge,  
2     notwithstanding your ruling. I think we can do all of that  
3     and you should see that all of that is sufficient.

4             THE COURT: Okay. I disagree with you, sir. I  
5     don't think either of those remedies would prevent  
6     Mr. Hamilton from picking up a phone and calling somebody who  
7     isn't cooperating with the Government, and there is no way to  
8     know whether or not he is actually doing it.

9             MR. LOWELL: I hate to interrupt you.

10            THE COURT: At this point Mr. Hamilton has forfeited  
11     the right for me to just believe in his word. He has  
12     blatantly violated an order that was specific in this case.  
13     I've already ordered that he not contact certain classes of  
14     people, and I believe that he knowingly did that, and I  
15     believe he knowingly did that in an attempt to influence  
16     someone he knew was a possible witness in the investigation of  
17     this case.

18            I'm going to revoke the order setting conditions of  
19     release --

20            MR. LOWELL: Judge, could I just say one more thing,  
21     please? I'm sorry.

22            Because you are finding this on a call that I was the  
23     sponsor of, I have to take this blame as well, and --

24            THE COURT: And you know what? I agree with that,  
25     and I think that I should talk to Chief Judge Lynn about your

1       conduct as well, but that's not what's before me right now.

2       What's before me is Mr. Hamilton's conduct, and --

3               MR. LOWELL: I understand. I'm pleading with Your  
4       Honor, given the situation of his medical condition, not to  
5       take the ultimate step when we could do everything short of  
6       that.

7               And you say that there's no way of knowing that he  
8       wouldn't pick up the phone. Yes, there is. We could require  
9       him to make calls only on his cell phone and give you -- or  
10      the Pretrial Services Department those records on an everyday  
11      basis. There surely are conditions that you can impose -- if  
12      you're concerned --

13              THE COURT: I disagree with you, and so I'm revoking  
14      the order setting conditions of release in this case and I'm  
15      ordering that Mr. Hamilton be detained. Of course you have  
16      the right to appeal me and you know how to do that.

17              MR. LOWELL: Can I ask you, given that there's no  
18      risk for the moment, to stay that so we can bring it to Judge  
19      Lynn and not require him on a Friday in the midst of the COVID  
20      crisis to detain him at this point, so that we have an  
21      opportunity to quickly bring it forward and we promise we  
22      will?

23              THE COURT: In light of the fact that it took the  
24      Government six months to bring this to my attention, I will  
25      grant the stay of my order.

1 MR. WIRMANI: Your Honor, can I approach alone?

2 THE COURT: Okay.

3 MR. LOWELL: Judge, we will file no later than  
4 Monday.

5 I'm sorry. Why is there an ex parte?

6 (Discussion at the bench, out of the hearing of the  
7 reporter.)

8 MR. LOWELL: I promise I will do this promptly.

9 THE COURT: Okay. I'm granting your motion for a  
10 stay and I'm staying my order pending you filing an appeal and  
11 that appeal being heard. So I'm staying my order for 14 days,  
12 unless you file an appeal, and if you file an appeal, I'm  
13 staying my order until Judge Lynn has had an opportunity to  
14 review it.

15 MR. LOWELL: Thank you, Judge.

16 THE COURT: Anything else we need to do today?

17 MR. WIRMANI: Not from the Government, Your Honor.

18 MR. MELSHEIMER: Thank you, Your Honor.

19 (End of hearing.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A  
2 CORRECT TRANSCRIPT FROM THE RECORD OF  
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.  
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES  
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE  
6 COURT AND THE JUDICIAL CONFERENCE OF THE  
7 UNITED STATES.

8  
9 S/Shawn McRoberts

07/17/2020

10 \_\_\_\_\_DATE\_\_\_\_\_  
11 SHAWN McROBERTS, RMR, CRR  
12 FEDERAL OFFICIAL COURT REPORTER  
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